Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Burlington Television Acquisition Corp.	)	Facility I.D. No. 7841
Licensee of Station KGWB-TV	)	NAL/Acct. No. 0741420010
Burlington, Iowa	)	FRN: 0001833516

NOTICE OF APPARENT
LIABILITY FOR FORFEITURE

Adopted: March 8, 2007 **Released: March 9, 2007**

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture ("NAL")* issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),[1] by the Chief, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,[2] we find that Burlington Television Acquisition Corp. (the "Licensee"), licensee of Station KGWB-TV, Burlington, Iowa (the "Station"), apparently violated Sections 73.3526(e)(11)(i)-(iii) of the Rules, by failing to place in the Station's public inspection file all required TV issues/programs lists, records concerning compliance with the children's programming commercial limits, and Children's Television Programming Reports, and apparently violated Section 73.670 of the Rules, by failing to comply with the limits on commercial matter in children's programming.[3] Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of seventeen thousand five hundred dollars ($17,500) for its violations of Sections 73.3526(e)(11)(i)-(iii) and Section 73.670.

II. BACKGROUND

2. In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia,* limiting the number of minutes of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewal applications the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a "program-length commercial").[4]

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[1] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

[2] *See* 47 C.F.R. § 0.283.

[3] *See* 47 C.F.R. §§ 73.3526(e)(11)(i)-(iii), 73.670.

[4] *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

3. Moreover, Section 73.3526 of the Rules requires a commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.[5] Pursuant to subsection 73.3526(e)(11)(ii), each commercial television broadcast station is required to place in its public inspection file, on a quarterly basis, records sufficient to allow substantiation of the licensee's certification, in its renewal application, of its compliance with the children's television commercial limits imposed by Section 73.670 of the Rules. Additionally, as set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia,* the efforts that it has made during the quarter to serve the educational and informational needs of children. Further, subsection 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter. These subsections of Section 73.3526 require licensees to place such records concerning commercial limits, Children's Television Programming Reports, and TV issues/programs lists for each quarter in the station's public inspection file by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee's rule violation.[6]

4. On September 30, 2005, the Licensee filed its license renewal application (FCC Form 303-S) for Station KGWB-TV (the "Application") (File No. BRCT-20050930BIQ). In response to Section IV, Question 3 of the Application, the Licensee stated that, during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3526 of the Rules. In Exhibit 17, the Licensee indicated that it first placed documents evidencing compliance with the commercial limits in children's programming in the public inspection file in January 2001 and that it first placed TV issues/programs lists in the public file in January 2002. Further, the Licensee reported that the Children's Television Programming Reports for 1998 were missing from the public inspection file. The Licensee claimed that all missing documents have now been placed into the public file.

5. Further, in response to Section IV, Question 5, the Licensee stated that, during the previous license term, it failed to comply with the limitations on commercial matter in children's programming specified in Section 73.670 of the Commission's Rules. In Exhibit 19, the Licensee indicated that the Station exceeded the children's television commercial limits on one occasion. Specifically, on July 8, 1998, a commercial which contained an image of a Quack Pack character aired during the "Quack Pack" program.

III. DISCUSSION

6. The Licensee's failure to place in its Station KGWB-TV public inspection file all required TV issues/programs lists, records concerning compliance with the children's programming commercial limits, and Children's Television Programming Reports constitutes apparent willful and repeated violations of Sections 73.3526(e)(11)(i)-(iii).

7. Moreover, the Licensee's failure to comply with the limits on commercial matter in children's programming constitutes an apparent willful violation of Section 73.670. Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs. S. Rep. No. 227, 101st Cong., 1st Sess. 24 (1989).

[5] *See* 47 C.F.R. § 73.3526.

[6] *See Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (*citing Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

Given this congressional concern, the Commission made it clear that program-length commercials, by their very nature, are extremely serious violations of the children's television commercial limits, stating that the program-length commercial policy "directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter."[7]

8. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.[8] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[9] The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,[10] and the Commission has so interpreted the term in the Section 503(b) context.[11] Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."[12]

9. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of $10,000 for violation of Section 73.3526 and a base forfeiture amount of $8,000 for violation of Section 73.670.[13] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[14]

10. In this case, the licensee concedes that the station's records concerning compliance with commercial limits on children's programming, TV issues/programs lists, and Children's Television Programming Reports for several quarters were not placed in the public inspection file. Indeed, the station's records concerning compliance with commercial limits were first placed into the public file in January 2001 and its TV issues/programs lists were first put into the public file in January 2002. In addition, the Station aired one program-length commercial in violation of Section 73.670. Considering the record as a whole, we believe that a $17,500 proposed forfeiture is appropriate for the apparent willful and repeated violations of Sections 73.3526(e)(11)(i)-(iii) and willful violation of 73.670.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act

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[7] *Children's Television Programming,* 6 FCC Rcd at 2118.

[8] 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

[9] 47 U.S.C. § 312(f)(1).

[10] *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

[11] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

[12] 47 U.S.C. § 312(f)(2).

[13] *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) *("Forfeiture Policy Statement"), recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

[14] 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement,* 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

of 1934, as amended, and Section 1.80 of the Commission's Rules, that Burlington Television Acquisition Corp. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of seventeen thousand five hundred dollars ($17,500) for its apparent willful and repeated violation of Sections 73.3526(e)(11)(i)-(iii) and 73.670 of the Commission's Rules.

12. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL,* Burlington Television Acquisition Corp. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

14. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.[15]

17. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Burlington Television Acquisition Corp., 915 Middle River Drive, Suite 409, Ft. Lauderdale, Florida 33304, and to its counsel, Kenneth E. Satten, Esq., Wilkinson Barker Knauer, LLP, 2300 N Street, N.W., Suite 700, Washington, D.C. 20037-1128.

FEDERAL COMMUNICATIONS COMMISSION

Monica Desai
Chief, Media Bureau

[15] *See* 47 C.F.R. § 1.1914.